

Notice Number	2019-92	Rule Number	Liq 1100
1. Agency Name & Address: <b>New Hampshire Liquor Commission</b> <b>50 Storrs Street</b> <b>Concord, NH 03302-0503</b>		2. RSA Authority: <b>RSA 176:14, VII (a), (b), and (e), VIII (e), and X; RSA 178:27, VI; and RSA 178:27-a, VI</b>	
		3. Federal Authority: _____	
		4. Type of Action: Adoption <u>  <b>X</b>  </u> Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment <u>  <b>X</b>  </u>	
5. Short Title: <b>Direct Shipping</b>			

6.(a) Summary of what the rule says and of any proposed amendments:

**The Liq 1100 rules implement RSA 176, The Liquor Commission, RSA 178, Liquor Licenses and Fees, and RSA 179, Enforcement, Requirements and Penalties. These rules set forth the process for individuals, corporations, partnerships, or limited liability companies who hold a valid license in another state, to ship beverages, wine, or liquor directly to New Hampshire consumers or licensees. The amendments to these rules expand, clarify, and further detail the process and documents necessary to obtain a direct shipper license. The updates to these procedures better reflect and define the existing direct shipping licensing process.**

**Most of the existing rules in Liq 1100 are scheduled to expire on 6/9/19 but are subject to extension pursuant to RSA 541-A:14-a.**

6. (b) Brief description of the groups affected:

**All current direct shipper license holders and all persons seeking to obtain a Direct Shippers license.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

RULE	STATUTE
Liq 1100	RSA 178:27
Liq 1102	RSA 178:27, RSA 178:29
Liq 1102.07	RSA 176:14, 178:27-a
Liq 1103	RSA 178:27, RSA 179:33, III
Liq 1104 and 1105	RSA 178:27, RSA 179:5, I
Liq 1106	RSA 178:27, RSA 179:33, III

NN 2019-92 Continued

## 7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Janet Donnelly/James Vara**Title: **Paralegal/Attorney**Address: **50 Storrs Street  
Concord, NH 03301**Phone #: **603-230-7048/603-230-7073**Fax#: **603-271-3758**E-mail: **janet.donnelly@liquor.nh.gov  
james.vara@liquor.nh.gov**TTY/TDD Access: Relay NH 1-800-735-2964  
or dial 711 (in NH)8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **July 15, 2019 by 4:00 pm**☒ Fax☒ E-mail☐ Other format (specify):

## 9. Public hearing scheduled for:

Date and Time: **July 8, 2019 @ 1:00pm – 4:00pm**Place: **NH Liquor Commission  
50 Storrs Street  
Concord, NH 03301**

## 10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **19:090**, dated **5/31/2019**

## 1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

## 2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

## 3. Cost and benefits of the proposed rule(s):

## A. To State general or State special funds:

None.

## B. To State citizens and political subdivisions:

None.

## C. To independently owned businesses:

None.

## 11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rule does not violate Part I, Article 28-a of the N.H. Constitution. The proposed rule does not create a new program or responsibility but seeks to expand or modify an existing program or responsibility. The rule does not mandate or assign responsibility to any political subdivision that would increase the costs the political subdivision may pay. There is no change from the existing rule.**

**Readopt with amendment Liq 1101, eff. 6/9/11 (Doc. #9441-A), cited and to read as follows:**

CHAPTER Liq 1100 RULES RELATING TO DIRECT SHIPMENT

PART Liq 1101 CHAPTER DEFINITIONS

Liq 1101.01 Definition of Terms. The following terms shall be construed for the purposes of this chapter as set forth below:

- (a) "Addressee" means the recipient person named on a direct delivery invoice;
- (b) "Licensed common carrier" means the holder of a carrier license issued by the New Hampshire Liquor Commission "Commission";
- (c) "Direct shipper" means a holder of a direct shipper permit issued by the Commission;
- (d) "Direct shipper permit" means a permit issued by the Commission to an individual, corporation, partnership, or limited liability company which holds a valid liquor license in another state, to ship beverages, wine, or liquor directly to New Hampshire consumers or licensees via New Hampshire licensed common carrier;
- (e) "Retail price" means the price the consumer paid to the direct shipper for beverage, wine, or liquor shipped by direct shippers into New Hampshire. The term shall include all charges except the actual amount paid by the direct shipper to a licensed common carrier for delivery;
- (f) "Importer" means an entity that engages in the sale of beverages, wine, or liquor that are sourced or produced outside of the United States;
- (g) "Wine manufacturer" means the holder of a Tax and Trade Bureau Producer/Blender permit who solely produces its own brand of wines under that permit. It does not include manufacturers who engage in contract bottling, custom crush facilities, packaging or branding on behalf of other entities; and
- (h) "Fulfillment house" means a warehouse located outside of New Hampshire licensed in their state of domicile that ships products on behalf of direct shipper permittees into the State of New Hampshire.

**Adopt Liq 1102.01 and Liq 1102.02, cited and to read as follows:**

PART Liq 1102 OVERLYING CONDITIONS FOR PERMITS

Liq 1102.01 Permits for licensees in their state of domicile. Persons currently licensed in their state of domicile as a wine manufacturer, beverage manufacturer, importer, wholesaler, or retailer or equivalents thereof may apply for a direct shipper permit from the Commission pursuant to these rules.

Liq 1102.02 Permittees shipping through licensed carriers. Direct shipper permittees shall ship their products through licensed carriers to customers in the State of New Hampshire consistent with these laws and rules.

**Readopt with amendment and renumber Liq 1102.01-Liq 1102.03, eff. 6/9/11 (Doc. #9441-A), as Liq 1102.03 and Liq 1102.04, to read as follows:**

Liq 1102.03 Completing Forms. Whenever a person is required to complete a form, as described in RSA 178 and this chapter, the following provisions shall apply:

- (a) Forms shall be filled out completely and truthfully;

- (b) Forms shall be completed in a legible manner;
- (c) Forms shall be completed in non-fading, non-erasable graphic, such as ink or typewritten;
- (d) Forms shall be signed by the business owner, a partner, corporate officer, member of a limited liability corporation, or an agent of the business with a valid power of attorney; and
- (e) In the event an applicant submits an incomplete form or fails to comply with an application rule or statute, such applicant's application shall not be processed and the application form and any submitted fee shall be returned to the applicant with the reasons for the application not being processed. Notification shall be made in writing within forty-five (45) days.

**Liq 1102.04 Fees, Form of Payment.**

- (a) Payment shall be made in the form of United States currency, a check, money order, other negotiable instrument payable upon demand, as approved by the Commission for the total amount due for each permit sought.
- (b) Such instrument described in paragraph (a) above shall be made payable to the "State of New Hampshire-Liquor Commission". A suitable alternative term, including but not limited to, "State of New Hampshire", "State Liquor Commission", or "Liquor Commission", shall not be cause for refusal to accept such instrument, providing it does not lend itself to endorsement of the instrument by any other party other than the state of New Hampshire, nor for any private individual or purpose.
- (c) Any payment made to the New Hampshire Liquor Commission by check that is returned as unpayable for any reason including any penalty assessment required by RSA 6:11-a shall be replaced by cash, money order or certified check within five (5) business days, after notification of the licensee or one of their employees, or proceedings for suspension or revocation of the permit shall be initiated.
- (d) Direct shipper permit holders who ship less than five (5) shipments into New Hampshire during a twelve (12) month permit period may, after the permit period has ended, request a refund in writing from the New Hampshire Liquor Commission. The New Hampshire Liquor Commission shall refund 20% of the permit fee paid multiplied by the difference between five (5) minus the number of shipments made during the permit period.

**Readopt with amendment and renumber Liq 1102.04, eff. 6/9/11 (Doc. #9441-B), as Liq 1102.05 to read as follows:**

**Liq 1102.05 Applicant Information Required.** For all new direct shipper applicants, the following information and documentation shall be required. Applications must be signed by the business owner, a partner, corporate officer, member of a limited liability corporation, or an agent of the business with a valid power of attorney.

- (a) A photocopy of the applicant's home state license to sell or manufacture alcoholic beverages shall be attached to the permit application. The attached license shall entitle the applicant to engage in its business in its domiciliary state.
- (b) A copy of the applicant's registration from his or her state or other governing authority of domicile to conduct business shall be attached to the permit application.
- (c) If the applicant is requesting the \$100 wine manufacturer direct shipper permit, the applicant must also provide:

- (1) A copy of the applicant's TTB Producer/Blender permit; and
  - (2) Certify on the New Hampshire permit application that the applicant only sells wine manufactured under that TTB permit.
- (d) The applicant shall provide on a form supplied by the Commission:
- (1) Business legal name in New Hampshire;
  - (2) Trade name and business physical address under which the business shall operate in New Hampshire;
  - (3) Whether the business is a single proprietorship, partnership, corporation, or limited liability company;
  - (4) Business phone number;
  - (5) Business mailing address;
  - (6) Business website;
  - (7) The names and addresses of the business owners if a single proprietorship or partnership, or the names and addresses of the corporate officers or members in the case of a corporation or limited liability company;
  - (8) A statement certifying that the applicant agrees to operate in New Hampshire under the requirements of RSA 178:27, Liquor Rules Chapter 1100, and all other applicable New Hampshire Laws and Liquor Rules; and (9) A statement certifying that the business shall operate under New Hampshire statutes including Title 13 and the rules of the Commission.
- (e) Certify that all information provided is true and correct, and that the applicant agrees to meet the New Hampshire operating conditions.
- Readopt with amendment and renumber Liq 1102.05, eff. 6/9/11 (Doc. #9441-A), as Liq 1102.06 to read as follows:**
- Liq 1102.06 Permit Renewals. Renewal of permits shall be the responsibility of the permittee. Failure of the Commission to notify the permittee shall not extend the existing permit or excuse shipment into New Hampshire without a permit.
- Readopt with amendment and renumber Liq 1102.06, eff. 12/10/14 (Doc. #10742), as Liq 1102.07 to read as follows:**
- Liq 1102.07 Alcohol Consultant Employment By A Direct Shipper.
- (a) Direct shippers may hire alcohol consultants to perform educational events and solicit orders on behalf of the direct shipper permittee in New Hampshire.
  - (b) Direct shippers shall provide the alcohol consultant a letter of employment as an agent.
  - (c) Direct shippers employing alcohol consultants shall register with New Hampshire secretary of state.
  - (d) Alcohol consultants employed by a direct shipper may use the registered trade name of the direct shipper.
  - (e) Direct shippers shall notify the Commission immediately when alcohol consultants cease employment as an agent.

(f) Direct shippers shall report and pay direct shipper fees to the Commission on all shipments into New Hampshire that alcohol consultants solicited on behalf of the direct shipper.

(g) Direct shippers shall report and pay direct shipping fees to the Commission on all products shipped to alcohol consultants.

**Readopt with amendment Liq 1103.01, eff. 6/9/11 (Doc. #9441-A), cited and to read as follows:**  
**PART Liq 1103 SHIPMENT AND FEE REPORTING**

Liq 1103.01 Direct Shipping Reports and Fees Due. Each direct delivery shipper permittee shall file the following with the Commission offices no later than the fifteenth calendar day of the month following each month for which there are shipments into New Hampshire:

- (a) A completed Form D-006, "Direct Shipping Worksheet";
- (b) Required direct shipment fee payments covering all deliveries into New Hampshire for the preceding month; and
- (c) Copies of all invoices delivered to New Hampshire or a report of the invoices consistent with 1103.02 (c).

**Readopt with amendment Liq 1103.02, eff. 6/9/11 (Doc. #9441-A & B), to read as follows:** Liq 1103.02 Direct Shipping Worksheet.

(a) The Commission shall provide to each direct delivery permittee at or prior to initial permit issuance, a Direct Shipping Worksheet form D-006.

(b) The permittee shall include the following on the Direct Shipping Worksheet:

- (1) The direct shipper name;
- (2) The direct shipper address;
- (3) The direct shipper permit number;
- (4) The month covered by the form;
- (5) The number of invoices shipped into New Hampshire during the month;
- (6) The dollar total of the above invoices, including shipping, and with shipping subtracted;
- (7) The number of products shipped;
- (8) The total direct shipment fee owed;
- (9) Fulfillment house used, if applicable; and
- (10) A signature, with the notation that the signature is made attesting to the accuracy of the Direct Shipping Worksheet under the provisions of RSA 641:3.

(c) The permittee shall attach to the Direct Shipping Worksheet either:

(1) Copies of invoices showing:

a. The names and addresses of the individuals to whom the alcoholic beverages were shipped;

b. Product Information:

(1) Wine - the vintage, brand, specific variety and quantity of each product shipped;

(2) Liquor – the manufacturer, brand, specific types and quantity of each product shipped; and

(3) Beverage or beer – the manufacturer, brand, specific style and quantity of each product shipped.

c. The prices charged for each product;

d. The licensed common carrier used to deliver the alcoholic beverages; and

e. The licensed common carrier tracking number used to identify each shipment; or

(2) Instead of the Direct Shipping Worksheet, a Commission approved report containing the information required above.

**Adopt Liq 1103.03 to read as follows:**

Liq 1103.03 Fulfillment House Requirements. Direct shipper permittees may contract with a fulfillment house subject to the following requirements:

(a) The direct shipper must notify the Commission that it intends to employ a fulfillment house and provide the name and contact information of the fulfillment house;

(b) The fulfillment house must provide, by the 10<sup>th</sup> of each month, reports to the Commission that provide the following information:

(1) The name and physical address of the direct shippers it has served;

(2) The direct shipper permit number and expiration date for each of the direct shippers it has served;

(3) The name and physical address of the New Hampshire consumer; and

(4) The carrier tracking number for the alcohol shipped.

(c) Fulfillment houses that fail to report in accordance with Liq 1103.03 (b) will be treated as unauthorized shippers.

**Readopt with amendment Liq 1104-Liq 1106, eff. 6/9/11 (Doc. #9441-A), to read as follows:**

**PART Liq 1104 LICENSED COMMON CARRIER REQUIREMENTS FOR DIRECT SHIPMENTS**

Liq 1104.01 Record Keeping Requirements. Licensed common carriers delivering alcohol from direct shipper permittees or their fulfillment warehouses shall maintain copies of adult signatures for each delivery of alcoholic beverages for a period of not less than six (6) months from the date of delivery and make such signatures available to the Commission upon request.

(a) Delivery Requirements. Licensed common carriers delivering alcohol from direct shipper permittees or fulfillment warehouses shall:

(1) Require an adult, which is defined as a person over the age of twenty-one (21), signature on a signature form or other format approved by the Commission; and

(2) Refuse delivery when:

- a. An adult refuses to personally accept and sign for the alcohol; or
- b. The addressee or the adult receiving the shipment appears to be:

.1 Under age 21;

2. Legally intoxicated;

3. Under the influence of drugs; or

.4 Meets any criteria of Title 13 which would make such delivery of alcohol illegal by a New Hampshire licensee.

(b) Carrier Shipment Reporting and Signature Retention. Licensed common carriers shall report delivery of packages of alcoholic beverages from direct shipper permittees to the Commission monthly so as to arrive by the 10<sup>th</sup> day of the month following delivery. The licensed common carrier shall retain adult signature records for at least six (6) months from the date of delivery. Common carrier reports required by this rule shall contain the following information:

- (1) Name of shipper and address;
- (2) Commission issued direct shipper permit number;
- (3) Number of packages shipped;
- (4) Name and signature of adult individual receiving package;
- (5) Weight;
- (6) Recipient name and address;
- (7) Business name and address, if applicable; and
- (8) Package tracking number.

Liq 1104.02 Warehouse Requirements for Direct Delivery Shipments.

(a) A warehouse license shall not be required for direct shipped alcohol by a licensed common carrier provided that alcohol is not stored any longer than required for transfer from a delivery vehicle to the next scheduled local delivery vehicle;



(b) When an adult is not available to sign for the initial delivery attempt, a licensed common carrier may hold the product for delivery not more than seven (7) calendar days without the Commission's approval; and

(c) Alcohol which is refused or undeliverable shall, within seven (7) calendar days of receipt in New Hampshire:

- (1) Be returned to the direct delivery shipper; or
- (2) The Commission shall be notified and the alcohol held for Commission pick up and disposal.

Liq 1104.03 Commission Notification.

- (a) The Commission shall provide licensed common carriers with lists of active direct shipper permittees upon request;
- (b) The Commission shall once a month provide licensed common carriers a list of unauthorized direct shippers from whom delivery is prohibited;
- (c) The Commission will notify licensed common carriers, in writing, when a company is removed from the list of unauthorized shippers subject to RSA 178:14; and
- (d) The list of active direct shippers and unauthorized direct shippers shall also be made available on the New Hampshire Liquor Commission's website.

Liq 1104.04 Illegal Products. Licensed common carriers shall only deliver alcohol in New Hampshire that has been shipped by holders of New Hampshire direct shipper permits or their fulfillment warehouses, the Commission, or New Hampshire liquor licensee's. Any other deliveries shall be deemed violations of RSA 178:1, I, and shall be investigated and prosecuted by the Commission.

Liq 1104.05 Illegal Delivery. The Commission shall investigate and prosecute both the individual and the company involved in any delivery violating the provisions of RSA 179:1 or RSA 179:5, I.

Liq 1104.06 Examination of Premises. Licensed common carriers shall provide the Commission:

- (a) Full access, without prior notice, to all areas licensed for alcohol shipments; and
- (b) With reasonable notice, all shipment and delivery records, including signature records, for all alcohol shipments.

**PART Liq 1105 DELIVERY RECEIPTS / IDENTIFICATION REQUIREMENTS**

Liq 1105.01 Delivery Signature Forms. Each shipment of alcohol into New Hampshire from a direct shipper permittee shall be clearly marked as "Alcoholic Beverages Adult Signature Required."

**PART Liq 1106 LICENSEE PURCHASES FROM DIRECT SHIPPER PERMITTEES**

Liq 1106.01 Request to Purchase. New Hampshire licensees who wish to obtain products from direct shippers shall request permission from the Commission by sending a written request to the Direct Shipping Unit of the New Hampshire Liquor Commission, including:

(a) Product Information:

- (1) Wine - the vintage, brand, specific variety, and quantity of the product or products which the licensee wishes to purchase; and
- (2) Liquor - the manufacturer, brand, specific types and quantity of the product or products which the licensee wishes to purchase.

(b) The name of the direct shipper from whom the licensee wishes to purchase the product; and

(c) Whether the licensee wants permission for a single order or to purchase from this source on an ongoing basis.

**Liq 1106.02 Commission Determination.** The Commission shall, in a public meeting, determine whether or not to approve the licensee request for purchase from a direct shipper based on the following:

(a) Financial impact on Commission and state revenue;

(b) Impact on business relationships with New Hampshire state suppliers; and

(c) If the Commission would profit by listing and selling the products to the licensee.

**Liq 1106.0 Licensee Notification.** The Direct Shipping Unit shall notify the licensee in writing whether or not the request for purchase was approved, and of any conditions that the Commission may attach to any approvals issued. A copy of the notice shall be sent to the direct shipper(s) named in the request.

#### APPENDIX

RULE	STATUTE
Liq 1100	RSA 178:27
Liq 1102	RSA 178:27, RSA 178:29
Liq 1102.07	RSA 176:14, 178:27-a
Liq 1103	RSA 178:27, RSA 179:33, III
Liq 1104 and 1105	RSA 178:27, RSA 179:5, I
Liq 1106	RSA 178:27, RSA 179:33, III